

AMENDED IN SENATE JUNE 17, 1998

AMENDED IN SENATE JUNE 9, 1998

AMENDED IN ASSEMBLY MAY 18, 1998

AMENDED IN ASSEMBLY APRIL 21, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1680

Introduced by Assembly Member Alquist
(Coauthor: Assembly Member Knox)
(Coauthor: Senator Rosenthal)

January 15, 1998

An act to amend Sections ~~1328~~, 1334, 1376, 1377, 2707.2, 2736, and 2737 of, *and to add Section 1328.1 to*, the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, as amended, Alquist. Unemployment insurance.

Existing law provides for the payment of unemployment compensation benefits to certain unemployed persons and unemployment compensation disability benefits to certain persons who become disabled. Existing law provides for the review of initial claims by the Employment Development Department, for the appeal of the initial determination as to whether or not to provide unemployment compensation benefits, and the further review of the appeal by the California Unemployment Insurance Appeals Board.

This bill would require the department and the appeals board to provide a claimant who is determined to be ineligible or eligible for less benefits than claimed with an appeal form after the initial determination and the initial appeal, and to include on the appeal form language indicating the claimant may wish to seek assistance with the appeal form designated sources. This bill would impose similar requirements on the department in connection with a determination or initial appeal of an overpayment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1328 of the Unemployment~~
2 ~~Insurance Code is amended to read:~~
3 ~~1328. The department shall consider the facts~~
4 ~~submitted by an employer pursuant to Section 1327 and,~~
5 ~~if benefits are claimed subsequent to the filing of the new~~
6 ~~or additional claim, make a determination as to the~~
7 ~~claimant's eligibility for benefits. The department shall~~
8 ~~promptly notify the claimant and any employer who~~
9 ~~prior to the determination has submitted any facts or~~
10 ~~given any notice pursuant to Section 1327 or this section~~
11 ~~and authorized regulations of the determination or~~
12 ~~reconsidered determination and the reasons therefor.~~
13 ~~If the department determines the claimant is ineligible~~
14 ~~for benefits or determines the claimant is eligible for less~~
15 ~~benefits than claimed, the department shall also provide~~
16 ~~the claimant, along with the notice of determination, an~~
17 ~~appeal form. On the appeal form itself, the department~~
18 ~~shall include language indicating that the claimant may~~
19 ~~wish to consult the telephone directory "yellow pages" or~~
20 ~~his or her local legal aid office to seek assistance with the~~
21 ~~appeal.~~
22 ~~If after notice of a determination or reconsidered~~
23 ~~determination the employing unit acquires knowledge of~~
24 ~~facts which may affect the eligibility of the claimant and~~
25 ~~such facts could not reasonably have been known within~~
26 ~~the 10-day period provided by Section 1327, the~~

~~1 employing unit shall within 10 days of acquiring such
2 knowledge submit such facts to the department, and such
3 10-day period may be extended for good cause. The
4 claimant and any such employer may appeal from a
5 determination or reconsidered determination to an
6 administrative law judge within 20 days from mailing or
7 personal service of notice of the determination or
8 reconsidered determination. The 20-day period may be
9 extended for good cause, which shall include, but not be
10 limited to, mistake, inadvertence, surprise, or excusable
11 neglect. The director shall be an interested party to any
12 appeal.~~

13 *SECTION 1. Section 1328.1 is added to the*
14 *Unemployment Insurance Code, to read:*

15 *1328.1. If the department determines that a claimant*
16 *is ineligible for benefits or determines that a claimant is*
17 *eligible for less benefits than claimed, the department*
18 *shall provide the claimant, along with the notice of*
19 *determination, an appeal form. On the appeal form itself,*
20 *the department shall include language indicating that the*
21 *claimant may wish to consult the telephone directory*
22 *“yellow pages” or his or her local legal aid office to seek*
23 *assistance with the appeal.*

24 *SEC. 2. Section 1334 of the Unemployment Insurance*
25 *Code is amended to read:*

26 *1334. An administrative law judge after affording a*
27 *reasonable opportunity for fair hearing, shall, unless that*
28 *appeal is withdrawn, affirm, reverse, modify, or set aside*
29 *any determination that is appealed under this article. The*
30 *claimant, any employer becoming a party to the appeal*
31 *by submitting a protest or information pursuant to*
32 *Sections 1326 to 1333, inclusive, and the director shall be*
33 *promptly notified in writing of the administrative law*
34 *judge’s decision, together with his or her reasons therefor.*
35 *If the administrative law judge decides the claimant is*
36 *ineligible for benefits or decides the claimant is eligible*
37 *for less benefits than claimed, the Unemployment*
38 *Insurance Appeals Board shall also provide the claimant,*
39 *along with the notice of decision, an appeal form. On the*
40 *appeal form itself, the Unemployment Insurance Appeals*

1 Board shall include language indicating that the claimant
2 may wish to consult the telephone directory “yellow
3 pages” or his or her local legal aid office to seek assistance
4 with the appeal. The decision shall be final unless, within
5 20 days after mailing of such decision, further appeal is
6 initiated to the appeals board pursuant to Section 1336.
7 The 20-day limitation may be extended for good cause.

8 “Good cause,” as used in this section, shall include, but
9 not be limited to, mistake, inadvertence, surprise, or
10 excusable neglect.

11 SEC. 3. Section 1376 of the Unemployment Insurance
12 Code is amended to read:

13 1376. The Director of Employment Development
14 shall determine the amount of the overpayment and any
15 assessment authorized under Section 1375.1 and shall
16 notify the liable person of the basis of the overpayment
17 determination. The department shall also provide the
18 liable person, along with the notice of overpayment, an
19 appeal form. On the appeal form itself, the department
20 shall include language indicating that the claimant may
21 wish to consult the telephone directory “yellow pages” or
22 his or her local legal aid office to seek assistance with the
23 appeal. In the absence of fraud, misrepresentation, or
24 willful nondisclosure, notice of the overpayment
25 determination shall be mailed or personally served within
26 the latest of the following periods:

27 (a) Not later than one year after the close of the
28 benefit year in which the overpayment was made.

29 (b) Not later than six months after the date a backpay
30 award was made.

31 SEC. 4. Section 1377 of the Unemployment Insurance
32 Code is amended to read:

33 1377. Within 20 days from the date of mailing or
34 serving of the notice of overpayment, the person affected
35 may file an appeal to an administrative law judge. The
36 director shall be an interested party to that appeal. The
37 administrative law judge, after affording a reasonable
38 opportunity for a fair hearing, shall, unless the appeal is
39 withdrawn, affirm, reverse, modify, or set aside the
40 findings set forth in the notice of overpayment. The party



1 and the director shall be notified of the administrative law
2 judge's decision, together with his or her reasons therefor,
3 which shall be final unless within 20 days from the date of
4 notification or mailing of the decision a further appeal is
5 initiated to the appeals board pursuant to Section 1336.
6 The appeals board shall also provide the claimant, along
7 with the decision, an appeal form. The appeal form shall
8 indicate that the claimant may wish to consult the
9 telephone directory "yellow pages," or contact his or her
10 local legal aid office, to seek assistance with the appeal.
11 The 20-day period for an appeal to the administrative law
12 judge or to the appeals board may be extended for good
13 cause.

14 "Good cause," as used in this section, shall include, but
15 not be limited to, mistake, inadvertence, surprise, or
16 excusable neglect.

17 SEC. 5. Section 2707.2 of the Unemployment
18 Insurance Code is amended to read:

19 2707.2. The department shall consider the facts
20 submitted by the employer pursuant to Section 2707.1
21 and make a determination as to the eligibility of the
22 claimant for benefits. The department shall promptly
23 notify the claimant of the determination and the reasons
24 therefor. The claimant may appeal therefrom to an
25 administrative law judge within 20 days from mailing or
26 personal service of the notice of determination. The
27 department shall also provide the claimant, along with
28 the notice of determination, an appeal form. On the
29 appeal form, the department shall include language
30 indicating that the claimant may wish to consult the
31 telephone directory "yellow pages," or contact his or her
32 local legal aid office, to seek assistance with the appeal.
33 The 20-day period may be extended for good cause. The
34 director shall be an interested party to any appeal.

35 "Good cause," as used in this section, shall include, but
36 not be limited to, mistake, inadvertence, surprise, or
37 excusable neglect.

38 SEC. 6. Section 2736 of the Unemployment Insurance
39 Code is amended to read:

1 2736. The Director of Employment Development
2 shall determine the amount of the overpayment and shall
3 notify the recipient of the basis of the overpayment
4 determination. In the absence of fraud,
5 misrepresentation or willful nondisclosure, notice of the
6 overpayment determination shall be mailed to or
7 personally served on the recipient within two years after
8 the beginning of the disability benefit period for which
9 the overpayment was made. The department shall also
10 provide the claimant, along with the notice of
11 overpayment determination, an appeal form. On the
12 appeal form, the department shall include language
13 indicating that the claimant may wish to consult the
14 telephone directory “yellow pages,” or contact his or her
15 local legal aid office, to seek assistance with the appeal.

16 SEC. 7. Section 2737 of the Unemployment Insurance
17 Code is amended to read:

18 2737. Within 20 days from the date of mailing or
19 serving of the notice of overpayment determination, the
20 person affected may file an appeal to an administrative
21 law judge. The director shall be an interested party to that
22 appeal. The administrative law judge, after affording a
23 reasonable opportunity for a fair hearing, shall, unless the
24 appeal is withdrawn, affirm, reverse, modify, or set aside
25 the findings set forth in the notice of overpayment
26 determination. The party and the director shall be
27 notified of the administrative law judge’s decision,
28 together with his or her reasons therefor, which shall be
29 final unless within 20 days from the date of notification or
30 mailing of the decision a further appeal is initiated to the
31 appeals board pursuant to Section 1336. The appeals
32 board shall also provide the claimant, along with the
33 decision, an appeal form. The appeal form shall indicate
34 that the claimant may wish to consult the telephone
35 directory “yellow pages,” or contact his or her local legal
36 aid office, to seek assistance with the appeal. The 20-day
37 period for an appeal to the administrative law judge or to
38 the appeals board may be extended for good cause.



1 “Good cause,” as used in this section, shall include, but
2 not be limited to, mistake, inadvertence, surprise, or
3 excusable neglect.

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